

From: Henry Keultjes
To: Microsoft ATR
Date: 1/28/02 4:32pm
Subject: Microsoft Settlement

Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530-0001

Re.: Microsoft Settlement

Dear Ms. Hesse:

In response to the request for comments in USDOJ vs Microsoft in accordance with the Tunney Act I ask that such settlement be rejected.

Having read the Revised Proposed Final Judgment between USDOJ and Microsoft, and having read the alternate proposed settlement by the nine states and DC, and having understood that the purpose of the Tunney Act to solicit feedback from US citizens affected by the outcome of a final judgment is to make sure that any such final judgment is in the best interest of the consumer, let me start by asking three questions:

1. Now that Microsoft has been at the center of antitrust controversy forever, starting when Novell sued Microsoft culminating in a consent decree in 1994, is it not in the best interest of the consumer and our country as a whole to find a solution that will keep Microsoft out of the courts, at least for a while?
2. Can the USDOJ vs Microsoft settlement proposal be in the best interest of the consumer if the agreement cannot be clearly understood even by the fairly educated person with a fairly good understanding of law that I am?
3. Can the USDOJ vs Microsoft settlement proposal be in the best interest of the consumer if the agreement ignores that, because Microsoft's marginal cost is effectively zero, remedies, that might have been effective for a predatory competitor that *does* have real marginal costs, are totally ineffective here?

What I, as the president of a company and as a consumer seek is simply an environment in which I can buy at a fair price what has become as ubiquitous a product as typewriters once were. In this case, however, this ubiquitous product is without the traditional competitive market place price pressures that go with ubiquitous products. Therefore prices for those Microsoft products that have replaced our typewriters are about four times higher than a competitive market would allow.

The solution, the remedy, that USDOJ and Microsoft offer to solve the issue of Microsoft having been found guilty of anti-trust violations gives me very little comfort, if any, that such a competitively priced market will develop as a result of that agreement. As a matter of fact, if the agreement is allowed to become final, Microsoft will be emboldened to eliminate some of the loopholes that have allowed sophisticated buyers to avoid the so-called Microsoft tax, the fact that the consumer pays for Microsoft

products when s(he) buys a PC, whether s(he) needs those Microsoft products or not.

On the other hand, the alternative settlement agreement proposed by the nine states and DC appears to offer a solution that *does* create a competitive environment where it now counts most, the desktop. Rather than addressing the various aspects of the USDOJ vs Microsoft proposal further, I will just address one issue, the clause in the alternate proposal that Microsoft establish three competitors for its MS-Office product through an auctioning process.

The real sticky problem in trying to find a good solution to *this* anti-trust case lies in the fact that, although an individual or a company may want to switch to a competitor's OS, the huge investment in training and learning MS-Office products, such as MS-Word and MS-Excel, effectively discourages or even prevents such a switch.

If one draws an analogy between the oft cited Standard Oil anti-trust case, Microsoft has managed to bring about a situation where 90% (including Apple's 5%) of the desktop software can only run on MS-Windows gasoline. Forcing Microsoft to sell off gas stations under those circumstances is obviously not a remedy. However, by forcing Microsoft to auction off three copies of MS-Office, complete with formulas and technical assistance for ten years, competitors can develop desktops that people already know and like but which desktops run on the gasoline of those competitors.

Forcing Microsoft to just share the formula for the gas is an inadequate remedy, not only because, in the eyes of its competitors and a significant segment of the hightech industry, the quality of Microsoft gas is not very good, but also because of the time delay to build a refinery capable of producing that special gasoline.

The solution that the nine states and DC are proposing is therefore an analogy to a Standard Oil case that is even more threatening to the consumer because, in this case, Microsoft also owns the factory that makes the special cars that more than 90% of the people are using now and which cars only run on Microsoft's own special gasoline. Forcing Microsoft to become the non-exclusive manufacturer of those proprietary MS-Office cars is therefore a brilliant remedy on the part of the nine states and DC as well as a meaningful punishment for Microsoft because it is neither a cash punishment nor a punishment that will hobble the company.

Competition for the dollars that consumers will spend to buy MS-Office is not only a desirable end to this anti-trust case, by having an MS-Office version that effectively runs on OSes like Linux and Unix, this solution will also lead to a more lasting end to this energy sapping Microsoft antitrust hassle. By punishing Microsoft fairly for its proven illegal behavior, the government in effect discourages other illegal behavior, such as cracking, by large groups of people who feel justified to take the law into their own hands if their government fails to afford its consumers protection from a monopolist under the law. Unless our government punishes Microsoft fairly for its illegal behavior, our government in effect creates an atmosphere in which lawlessness can blossom.

Restated in simple terms, it is my belief that it is in the best interest of the consumers and our country that the court reject the proposed USDOJ vs Microsoft final judgment and instead adopt the remedies in the proposed final judgment of the nine states and DC as the final judgment.

Sincerely,

Henry B. Keultjes

President
Microdyne Company
POB 1056
Mansfield OH 44901-1056
Voice 419-525-1111

HBK/s 27 January 2002